IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

S.B.CIVIL WRIT NO. 4274 / 2006

KISHOR SINGH SON OF SHRI GUMAN SINGH AGED 57 YEARS RESIDENT OF SHIKSHAK COLONY, NEAR CHOPASANI SCHOOL, JODHPUR.

----Petitioner

Versus

1. UNION OF INDIA THROUGH SECRETARY, HOME DEPARTMENT, SECRETARIAT, NEW DELHI.

2. DIRECTOR GENERAL OF BSF HEAD QUARTER, JODHPUR.

3. COMMANDANT 42 BATTALIONS, BASK MUNDRA ROAD, BHUJ (GUJARAT)

4. COMMANDANT 42 BATTALIONS, BSF SAGAR ROAD, BIKANER.

5. JOINT ASSISTANT DIRECTOR (ACCOUNTS) CELL, PAD, BSF, NEW DELHI.

----Respondents

For Petitioners : Mr.Anil Vyas, Adv.

For Respondents : Mr.D.P. Dhaka, Adv.

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Judgment

07/12/2016

Heard learned counsel for the parties at length.

The petitioner in the present writ petition has prayed that the order (Ex.6) may be quashed and the action of the respondents in not paying him pension be declared illegal and he may be further granted pensionary benefits as per letter issued by the BSF dated 01.01.1997.

The case set up by the petitioner is that he resigned from service as BSF personnel and was discharged on 11.3.1985 after having completed about 17 years of service, as having been enrolled on 07.03.1968. As per the existing Circulars issued by the Ministry of Home Affairs dated 22.12.1995 his case was recommended for grant of pension vide letter dated 01.01.1997 by the Head Quarters, 4 Battalion BSF, Bikaner. However, Head Quarters vide their order dated 04.03.1999 rejected his case for grant of pension.

Learned counsel for the petitioner has assailed the order and has relied upon the observations made by the Hon'ble Apex Court in **Raj Kumar & Ors. Vs. Union of India & Anr. Reported in AIR 2006 SC 938** wherein three categories were created in relation to persons who had resigned (a) as per Circular, in this category those persons who resigned and were granted pension prior to Circular 27.12.1995 and (b) Ex-servicemen who resigned pursuant to the Circular dated 27.12.1995 which are sub-categorised in three different categories. It is his case that he falls under

Category A namely persons who resigned and were granted pension even prior to issuance of the Circular dated 27.12.1995.

Counsel for the petitioner states that as petitioner was discharged in the Year 1985 and he was entitled to be treated as those who have retired prior to 1995 and also deemed to have been granted pension.

Per contra, the learned counsel for the respondents has pointed out that the petitioner although resigned and discharged in the Year 1985, he was never granted pension, as his case for pension was for the first time put up in view of the Circular issued By the Border Security Force dated 27.12.1995 and in light of the Circular dated 27.12.1995, the pension case was processed. However, in view of the subsequent clarifications, issued and Circular dated 17.10.1998 wherein it was provided that a person who has not completed 20 years of service cannot be granted pension, the case of the petitioner was rejected by the impugned order dated 04.03.1999.

The issue relating to grant of pension to BSF Personnel who resigned without completing requisite 20

years of qualifying service, necessary for grant of pension is no more res-integra. The Hon'ble Supreme Court in **Raj Kumar (Surpa)** has held in Para No.16 & 17 which is as under:-

> "16. We find that the cases before us can be divided into the following categories:
>
> [A] Pre Circular:
>
> Personnel who resigned and were granted pension for special reasons, even prior to the Circular dated 27.12.1995,
>
> [B] Post Circular:
>
> Personnel who resigned, pursuant to the circular dated 27.12.1995. These persons can be further divided into two sub-categories:-
>
> [I] Personnel who retired in 1996, were sanctioned pension and were therefore, asked vide letters dated 31.10.1998 not to report for re-induction. Their pension has been stopped pursuant to the judgment in Rakesh Kumar (Supra). These persons can be further divided into two sub-categories:-
>
> (a) those who are in a position to be re-inducted into the service as a result of being age barred or due to being medically or physically unfit.
>
> (ii) Those who retired subsequent to 1996, were not sanctioned pension, and were directed to report for re-induction in to service or to forfeit pension benefits by virtue of

the circular dated 17.10.1998 and the individual letters.

17. Having considered the peculiar facts arising in each of these groups, we make the following orders:-

1. The personnel falling in category (B) (ii) i.e. those persons who had retired subsequent to 1996 pursuant to the circular dated 27.10.1995 and had not been sanctioned pension, but who have been directed to report for re-induction in service shall necessarily have to forfeit their pension. If they have not reported for service by virtue of the circular dated 17.10.1998. If, however, they have reported for service then there is no question of any relief in their case.

2. In the case of persons falling in category (B) (i), they shall also be given the option of re-induction into service, and those falling in category (B) (i) (a) shall be so re-inducted, subject to the conditions stipulated in circular dated 17.10.1998 and no condition that they shall refund the GPF and pension amounts drawn by them till re-induction. The authorities shall indicate the dead-line by which such persons shall offer themselves for re-induction.

3. In the case of persons who shall fall in category (B) (i) (b) i.e. persons who had retired in 1996, were sanctioned pension but who cannot be re-inducted today as they are age barred or physically or medically unfit or for any other reason including their inability to return the amount of GPF, pension drawn or other dues, there shall be

> no question of continuing payment of pension which shall be liable to cease as a result of the decision in Rakesh Kumar (Supra). We are however, of the view that equity demands that in such cases there shall be no recovery of the pension amounts already paid to them.
>
> 4.In cases which fall under category (A), i.e., personnel who had resigned prior to the circular dated 27.12.995 and had been granted pension for special reasons and continued to draw it till the stoppage of pension as a result of the judgment in Rakesh Kumar (Supra), we think that irrespective of the position of law, equity demands that, as they have drawn their pension for long periods, they shall not be asked to refund their drawn pension amounts, nor shall their pension be stopped now."

The view taken by the Hon'ble Supreme Court has been again held and followed by the Hon'ble Supreme Court while setting aside the view taken by the Kerala High Court in **Union of India & Ors. Vs. Madhu E.V. & Anr**. reported in **2012 AIR SCW 3269** and while following the view taken by the Hon'ble Supreme Court in **Raj Kumar's case (Supra)**. It is very specifically mentioned that the respondents who had resigned from BSF services immediately or thereafter completing of ten years of service but having not completed 20 years

of service would not be entitled to any pensionary benefits.

Admittedly, the petitioner did not receive any pensionary benefits on having resigned on completion of 17 years of service. His case does not fall under category A as quoted above in **Raj Kumar's case (Supra)** and he therefore, cannot be get benefit of pension as he was not getting pension on the date when the Circular dated 27.12.1995 itself have been issued. The persons categorised in Category A (Supra) were those who had been drawing pension prior to 27.12.1995 and as pointed out by the Hon'ble Supreme Court equity in favour of those who are drawing pension prior to 27.12.1995 has been taken into consideration for continuing them to draw such pension.

In view of the aforesaid admitted position of law, I do not find any force in the submissions of learned counsel for the petitioner. The writ petition is hereby dismissed with no costs.

(SANJEEV PRAKASH SHARMA)J.

mamta